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No. 91-879

Supreme Court, U.S.

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In The
Supreme Court of the United States

October Term, 1991

KOREAN UNITED PRESBYTERIAN
CHURCH OF LOS ANGELES,

Petitioner,

v.

PRESBYTERY OF THE PACIFIC;
SYNOD OF SOUTHERN CALIFORNIA
AND HAWAII; THE UNITED PRESBYTERIAN
CHURCH OF THE UNITED STATES,

Respondents.

On Petition For A Writ Of Certiorari
To The Court Of Appeal
Of The State Of California

REPLY TO BRIEF IN OPPOSITION

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REPLY TO BRIEF IN OPPOSITION

Petitioner, the Korean United Presbyterian Church of Los Angeles, Inc., respectfully requests that the Court grant its petition for writ of certiorari.

In almost every instance, a dispute between competing factions of a church congregation over ownership of church property touches upon the interests protected by the religion clauses of the First Amendment. At the very least, one group will have its right to the free exercise of religion impaired by losing access to what had been its religious sanctuary. When, as here, the dispute is between a superior body in a hierarchical church and the overwhelming majority of one of its congregations, a judicial determination of ownership will aid or hinder a particular form of religious organization, as well as affecting the free exercise interests of a portion of the congregation.

Ideally, when confronted with such constitutionally sensitive questions, a court will tread cautiously, leaving questions of religious doctrine to church authorities while at the same time protecting to the extent constitutionally permissible the interests of the members of a particular religion in the property they may have purchased and improved. Unfortunately, as this case demonstrates, the constitutionally required course is not always easy to follow.

Not surprisingly, respondents have attempted to disguise the extent to which religion clause issues necessarily are a part of any religious property determination, and to characterize the determination of the court below as a mere application (or misapplication) of state law. On the contrary, in reversing the trial court, the California

Court of Appeal enmeshed itself in resolving conflicting beliefs respecting authority within the Presbyterian Church in violation of the Establishment Clause.

Instead of examining doctrine-neutral materials to determine whether petitioner Korean Church owned the property, the Court of Appeal accepted at the outset and without question the Presbytery's designation of the minority faction as the "true" church. Leaping ahead in the process, the court of appeal looked *first* to the organizational documents of the Presbyterian Church and gave conclusive preference to selected portions of the *religious* documents over and above the neutral, statutorily created power of the members of a non-profit corporation to govern the affairs of that corporation.

Thus, it is apparent that inquiries under the neutral principles approach are not so easily compartmentalized as this Court might have wished. The determination below was ultimately the "official . . . preference" of one religious entity over another "that the Framers of the First Amendment forbade." *Larson v. Valente*, 456 U.S. 228, 255 (1982).

1. Respondents twice question whether petitioners are, in fact, the Korean United Presbyterian Church. See Brief in Opposition at ii, 2. There is no dispute that, after a dispute over the refinancing of church property that had been acquired and improved by petitioner and its antecedents, an overwhelming majority of the members of the Korean United Presbyterian Church voted to sever their affiliation with respondents. There can also be no contention that, however named, that group would not

have standing to challenge the decision first of the Presbytery and then of the California Court of Appeal, to find a trust in favor of the parent church.

The determination of the California Court of Appeal that the religious corporation, the Korean United Presbyterian Church, Inc., is no longer comprised of the vast majority of its members is one of the issues for which this Court's review is sought. Indeed, that portion of the decision below is typical of the extent to which the court of appeal give preference to the Book of Order, the religious constitution of the Presbyterian Church, over the secular organizational structure of the Korean United Presbyterian Church. Like most if not all states, California provides that churches may organize themselves as non-profit corporations, *see* Cal. Corp. Code §§ 9400 et seq., as did the Korean United Presbyterian Church in 1945. Thus, a church has a dual existence, both as a congregation within a denomination and as an independent California corporation whose governing members are its congregants.

No doubt a religious corporation could subordinate its governance to a superior body within the denominational hierarchy. Indeed, California law specifically provides that a local congregation may, under certain circumstances, impose upon its property a trust in favor of a superior religious body. Significantly, such trusts are to be found only if precise and rigorous requirements are met. The requirements of California law are not the issue here, but the policy underlying them is instructive of how the court below should have approached the case. The court should have deferred to the local congregation's exercise of its powers as a non-profit corporation in

determining its religious affiliation in the absence of specific provisions of its bylaws and articles of incorporation requiring deference to superior religious bodies. For the court to do otherwise is to cast aside the neutral principles to which it purported to adhere in favor of an ill-defined – and constitutionally precluded – effort to reconcile incompatible provisions of local and hierarchical governance. Here, in purporting to set aside the vote of the members of the Korean United Presbyterian Church in favor of the determination of the respondent Presbytery, the California Court of Appeal found a sufficient basis for ignoring the well established rules of governance for non-profit corporations in a single phrase of the bylaws, to the effect that the corporation “shall be at all times subject and adhere to the doctrines and discipline of the Presbyterian Church.” App. 72. Obviously, the interpretation of the content and meaning of the “doctrines and discipline of the Presbyterian Church” is a religious question that the court should not have answered.

2. Respondents also complain about the extent to which petitioner relied on the findings of the trial court in setting forth the issues upon which the writ of certiorari should be granted. To a considerable extent, it is respondents’ reliance on the largely factual determinations of court of appeal that is questionable, for it stands the normal appellate doctrine of deference to trial court factual findings on its head. Respondents’ gleeful embrace of the court of appeal opinion may be a function of how familiar its contents are to respondents. In place

of the reasoned and considered opinion of the trial court, which weighed the evidence favoring both sides and resolved the trust and land ownership issues in accordance with well-established common law and trust principles, the court of appeal simply adopted for its opinion – verbatim except for deleting the heading “Argument” from the beginning of the legal section – the respondents’ brief.¹

3. Although respondents would have it that the decision below rested on three independent grounds, the various reasons given by the court for its decision are all dependent on its interpretation of the 1945 articles of incorporation of the Korean United Presbyterian Church. See Brief in Opposition at 10-17. The determination as to the “true” identity of the Korean United Presbyterian Church, the resolution of the application of certain trust provisions of the Book of Order, and the misapplication of California State Law were all founded on general

¹ The religious adherence of the Court of Appeal to respondents’ arguments led to wholesale inclusion of factual and legal errors that are typified by the holding that “[California] Corporations Code section 9142, subdivision (d) creates a presumption of a trust in the church property.” App. 101. First, it should be noted that the court repeated a typographical error from respondents’ brief below: the reference should have been to subsection (c), because subsection (d) pertains to the amendment of trusts, not to their creation or existence. More significantly, however, subdivision (c), far from creating a *presumption* of a trust, in fact creates a rebuttable presumption *against* one. See Cal. Corp. Code § 9142(c) (West 1991) (“No assets of a religious corporation are or shall be deemed to be impressed with a trust, express or implied, statutory or at common law, unless one of the following applies. . . .”)

promises of fealty to doctrine and general statements of authority in the 1945 articles of incorporation and bylaws. Thus, article six provided, "that this corporation shall be at all times subject and adhere to doctrines and discipline of Presbyterian Church. . . ."; and bylaw article 62 stated, "As a general rule, any matter not provided for in these bylaws shall be determined in accordance with the Book of Order".

Significantly, the articles and bylaws were adopted during the time that the Korean United Presbyterian Church was affiliated with the United Presbyterian Church (before its merger with the Presbyterian Church in the United States), and was not subject to a trust provision over its property. Moreover, even after the reunion, the Korean United Presbyterian Church had the power under the Church constitution to opt out of trust provisions, as it did.

The importance of these aspects of the record below is not to provide a basis for this court to second guess the determinations of the court of appeal (much as the court of appeal second guessed the trial court), but to illustrate the extent to which the California court muddled the two different approaches it attempted to apply. In place of deference to hierarchy or the secular application of neutral principles, the court engaged in a selective reading of the documents controlling church governance, and in a forbidden inquiry into church polity and doctrine that offended the Establishment Clause of the First Amendment.

4. The nub of this case is the extent to which it is consistent with the limitations placed on the resolution of

church property disputes by *Jones v. Wolf*, 443 U.S. 595 (1979), and whether, in light of intervening experience as exemplified by this case, the constitutional hazards of civil adjudication of church property disputes are adequately addressed by *Jones*. While respondents would argue that *Jones* leaves to the states the decision about what method to use in resolving church property disputes, it is clear that Free Exercise and Establishment Clause issues always lurk in such determinations. See, e.g., *Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969).

When it approved the application of neutral principles to church property disputes, the Court broadened the inquiry state courts could make to include such problematical documents as the parent and local churches' organizational documents, see *Jones v. Wolf*, 443 U.S. at 603, but also imposed the requirement that the documents be examined in "purely secular terms." *Id.* at 604. In the present case, the court of appeal went beyond a purely secular examination of the Presbyterian Church's structure and authority, and this court's vigilant supervision of the constitutionally mandated line is sorely needed.

When *Jones* was decided, the court recognized that the approval of neutral principles would lead to at least "occasional problems in application." *Id.*

These problems . . . should be gradually eliminated as recognition is given to the obligation of "States, religious organizations, and individuals [to] structure relationships involving church property so as not to require the civil courts to resolve ecclesiastical questions."

Id. (quoting *Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. at 449). Indeed, in the interim, California has adopted laws requiring that trusts respecting church property must be detailed and explicit. See Cal. Corp. Code § 9142 (West 1991). At the time this dispute arose, the Presbyterian Church was, after reunification of its two branches, in a period of transition toward unambiguous statements of the trust relationship it intended to establish with its congregations.²

Jones was decided before the movement toward precise requirements for the creation of property trusts had begun in earnest. This case arose at a transitional stage in the process, when far-from-unambiguous organizational documents co-exist with state corporation law provisions that are sensitive to the Court's recognition in *Jones* that such provisions can avoid constitutional difficulties. As a result, the state court was left to perform a function that was not described in *Jones*, reconciling relatively clear provisions of state religious corporation law with the far

² Although the respondents claim they followed the direction of *Jones* with respect to securing control of denominational property, the record in this case shows that, at best, respondents had accomplished some but not all of the steps required for unambiguous control. For example, although the Book of Order included a trust provision, the Book of Order also included a provision permitting the Korean United Presbyterian Church (among others) to opt out of the trust provision. Moreover, the "deeds" had not been "modif[ied]," nor did the "corporate charter . . . include a right of reversion or trust in favor of the general church." *Jones*, 443 U.S. at 603.

more ambiguous provisions of the organizational documents of petitioner and respondents. By essentially ignoring the statutory provisions, and by launching instead on an inquiry into the interstices of church governance, the court of appeal violated the Establishment and Free Exercise Clauses of the First Amendment.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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